IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDCITION
CRIMINAL APPEAL NO.384 OF 1990

The State of Maharashtra ... **Appellant (Orig. Complainant)**

Versus

1. Rajiv Madan Mehata
2. Nana Mahadeo Mehata
3. M/s. Madan Mahadeo Mehata & Co. ... **Respondents (Orig.Accd.Nos.1 to 3)**

Shri D.R. More APP for the State
Miss Rashmi Gagwani i/by Ganesh Gole for Respondents

CORAM : D.G. DESHPANDE, & S.R. SATHE, JJ.
DATED : 19th JANUARY, 2007

ORAL JUDGEMENT :- (PER S.R.SATHE,J.)

1. The State of Maharashtra has preferred this appeal against the judgement and order passed by the Court of Chief Judicial Magistrate, Raigad-Alibag whereby accused Nos.1 to 3 were acquitted of the offences punishable under Sec. 7(i) r/w. Sec. 2(ia)(a) r/w. Sec. 16(1)(a)(ii), Sec. 7(i) r/w. Sec. 2(i)(c) r/w. Sec. 16(1)(a)(ii), Sec. 7(iii)(v) r/w. Rule 50 r/w. Sec. 16(1)(a)(ii) and Sec. 17 of the Prevention of Food Adulteration Act and Rules made thereunder.

2. Brief facts giving rise to this appeal are as under :-

The accused Nos. 1 and 2 were carrying on business of grocery shop in the name and style as accused No.3 at Savad, Tal. Poladpur, Dist. Raigad. On 11/12/1986, Food Inspector Shri S.B. Deshmukh alongwith other Food Inspector by name Shri Nehete and one panch witness Konekar went to a grocery shop of accused Nos. 1 and 2. At that time, only accused No.1 was present in the shop. After disclosing identity, Food Inspector Deshmukh asked accused No.1 to sale him 600 grams of 'Ova' (Bishop's weed) kept for sale in the shop. Accused no.1 accordingly sold said quantity of 'Ova' (Bishop's weed) and took Rs. 9/- as price. The Food Inspector divided the sample in three equal parts and sealed the same. The two sealed parts were sent to Local (Health) Authority i.e. Asstt. Commissioner, Food and Drug Administration, Raigad, at Pen and one sample was sent to Public Analyst, New Bombay for analysis. In due course, Food Inspector received the report. He then sent the case papers to Joint Commissioner, Food & Drug Administration for obtaining consent for prosecution. When he received the consent, he lodged the prosecution in the court of Chief Judicial Magistrate, Raigad.

3. The evidence before charge was recorded and on that basis, charge Exh-6 was framed against the accused

for the offences mentioned above. Charge was read over and explained to the accused. All the accused pleaded not guilty and claimed to be tried. It was their contention that 'Ova' (Bishop's weed) was of standard quality and they have been falsely implicated.

4. In order to prove the prosecution case, the prosecution examined Food Inspector Shri Deshmukh as well as complainant Shri S.J. Jambhale.

5. After considering the evidence adduced by the Prosecution, the learned Chief Judicial Magistrate came to the conclusion that so far as accused No.2 is concerned, he was not present in the shop at the relevant time and as such he can not be convicted. Besides this, the learned Trial Judge came to the conclusion that there was inordinate delay of two years or so in launching the prosecution and the same has resulted into depriving the accused to exercise their right under section 13 (2) of the Prevention of Food Adulteration Act. So, under the circumstances, when there was no satisfactory explanation given for launching the prosecution at late stage, accused are entitled to get benefit of the said delay. He, therefore, acquitted the accused.

6. The State of Maharashtra challenged the above mentioned order. Learned APP could not assign any satisfactory reason for delay in launching the prosecution. He, however, submitted that 'Ova'(Bishop's weed) is not a perishable article and as such it can not be said that the period of two years has caused any prejudice to the accused or that his valuable rights under section 13(2) could not be exercised by him. He, therefore, submitted that the appeal be allowed and accused be convicted with the offences with which they were charged.

7. From the perusal of evidence one thing is certain that it is not in dispute that on the day of incident Food Inspector Mr. Deshmukh had taken sample of 'Ova' (Bishop's weed) from the shop of accused Nos. 1 and 2 and at that time, accused No.2 was not present in the shop. It appears that procedure that was adopted for taking sample was challenged by the defence and it was tried to be contended that Shri Deshmukh, Food Inspector had in fact not received proper training from the authorized institution regarding taking samples. However, there is sufficient evidence on record to show that Food Inspector had taken such education and had in

fact taken the sample by following due procedure and had also prepared three parts of the said sample and were properly sealed.

8. Sample was collected on 11/12/1986 and the Prosecution was launched on 23/01/1989 i.e. after more than two years period. It was therefore argued on behalf of the defence that as a result of the two years delay, valuable rights of the accused under 13(2) of Prevention of Food Adulteration Act was negatived. It would be worthwhile to see what section 13(2) says. It runs as follows :-

> *Section 13 Report of public analyst.*
>
> *(1) xxxxxx*
>
> *(2) On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14A, forward in such manner as may be prescribed, a copy*

of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analyzed by the Central Food Laboratory.

9. In the instant case, there is nothing on record to indicate that the accused actually exercised the said right. No doubt he could have exercised the same but it was the contention of the accused that there was no propriety in exercising the said rights at such a late stage because it was argued that though 'Ova' (Bishop's weed) is not perishable article, at the same time, there was every possibility that when such article was kept in sealed condition for such a long period, the same was bound to catch fungus and loose its original character. So under such circumstances, the accused could not get a fair chance to get the said sample examined and to have proper report about the

same. So, though technically he could have asked to get the third sample examined, the circumstances were such that the object with which such provision was required to be availed was lost in the instant case. So, giving benefit of this situation, the learned Trial Judge has acquitted the accused. We can not ignore the fact that there is humidity in the weather of Alibag District. So at such place, there was every possibility of the sample catching fungus or loosing its original character and getting it deteriorated. So, under such circumstances, as the accused did not get the opportunity to get the third sample examined within reasonable period, the learned Trial Judge has acquitted the accused. It can not be said that the finding recorded by the Trial Court is not based on the facts and circumstances of the case or that the conclusion reached by him is unreasonable or perverse. When such is the position, there is no propriety in interfering with the said order of acquittal.

10. In this view of the matter, the appeal is dismissed.

The acquittal of the accused of the offences punishable under Sec. 7(i) r/w. Sec. 2(ia)(a) r/w. Sec. 16(1)(a)(ii), Sec. 7(i) r/w. Sec. 2(i)(c) r/w. Sec. 16

(1)(a)(ii), Sec. 7(iii)(v) r/w. Rule 50 r/w. Sec. 16(1)(a)(ii) and Sec. 17 of the Prevention of Food Adulteration Act and Rules made thereunder is upheld.

Bail bonds of the accused stand cancelled.

(D.G. DESHPANDE,J.)

(S.R. SATHE,J.)